

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TERRANCE EUGENE WILLIAMS,
 Petitioner,
 v.
 NEVADA DEPARTMENT OF
 CORRECTIONS, et al.,
 Respondents.

Case No. 3:21-cv-00187-HDM-CLB

ORDER

This habeas matter is before the Court on Petitioner's failure to file an amended petition on the Court's required 28 U.S.C. § 2254 petition form and a copy of the prisoner's trust account statement for the six-month period prior to filing as well as consideration of Petitioner's Motion Pertaining to Pertinent Matters (ECF No. 8) and Motion Inquiring about Appointed Counsel (ECF No. 9).

I. BACKGROUND

On May 24, 2021, the Court entered an order directing Petitioner Terrance Eugene Williams, a *pro se* Nevada prisoner, to file his petition on the Court's required 28 U.S.C. § 2254 petition form and to either pay the standard five dollar (\$5.00) filing fee or file a complete application for leave to proceed *in forma pauperis* ("IFP") within 30 days. ECF No. 4. On June 9, 2021, Petitioner filed a Motion for Appointment of Counsel¹ (ECF No. 5) and another IFP application (ECF No. 6).

¹ The Court will defer consideration of the motion for appointment of counsel until Petitioner has fully complied with this order.

1 On July 6, 2021, the Court instructed Petitioner to file an
2 amended petition on the Court's form within 30 days and file a
3 copy of his inmate trust account statement for the six-month period
4 prior to filing, or alternatively pay the \$5 filing fee within 30
5 days. To date, Petitioner has not complied with the Court's order.

6 Petitioner's IFP application is incomplete. Petitioner must
7 include a copy of the prisoner's trust account statement for the
8 six-month period prior to filing.² See 28 U.S.C. § 1915(a); LSR 1-
9 1, LSR 1-2. Petitioner will have one final chance 30 days from the
10 date of this order to submit a copy of the prisoner's trust account
11 statement for the six-month period prior to filing to complete his
12 IFP application or alternatively pay the \$5.00 filing fee.

13 In addition, to date, Petitioner has not filed an amended
14 petition on the Court's required 28 U.S.C. § 2254 petition form as
15 instructed in the Court's previous order. Local Rule LSR 3-1
16 requires Petitioner to file his petition on the Court's required
17 § 2254 petition form. Instead of complying with the local rule,
18 Petitioner used a state court form. Petitioner must use the
19 required form to state his claims in order to provide the court
20 with necessary information to conduct preliminary review of the
21 petition. Accordingly, Petitioner must file an amended petition on
22 the Court's form within 30 days of the date of this order.

23 Petitioner must clearly title the amended petition as such by
24 writing the word "AMENDED" immediately above "Petition for a Writ
25

26 ² An IFP application is complete with the appropriate supporting
27 documentation: (1) a financial certificate signed by an authorized prison
28 official, (2) a copy of the prisoner's trust account statement for the six-
month period prior to filing, and (3) a financial affidavit and acknowledgement
signed by the prisoner showing an inability to prepay fees and costs or give
security for them.

1 of Habeas Corpus" on page 1 in the caption, and he must place the
2 case number, 3:21-cv-00187-HDM-CLB, in the designated space. Under
3 Local Rule 15-1, the amended petition must be complete in itself
4 without reference to previously filed papers. Thus, the claims and
5 allegations that are stated in the amended petition will be the
6 only matters remaining before the Court. Any claims or allegations
7 that are left out of the amended petition or that are not re-
8 alleged will not be considered.

9 **II. Motion Pertaining to Pertinent Matters (ECF No. 8)**

10 Petitioner appears to request a status regarding his parole
11 hearing. Federal law provides two main avenues to relief on
12 complaints related to incarceration: (1) a petition for habeas
13 corpus, 28 U.S.C. §§ 2241, 2254, 2255; and (2) a complaint under
14 the Civil Rights Act of 1871, 42 U.S.C. § 1983. *See Muhammad v.*
15 *Close*, 540 U.S. 749, 750 (2004); *see also Nettles v.*
16 *Grounds*, 830 F.3d. 922, 927 (9th Cir. 2016) (en banc).

17 Federal habeas statutes allow a state prisoner or pretrial
18 detainee to challenge "the validity of any confinement or to
19 particulars affecting its duration." *Muhammad*, 540
20 U.S. at 750 ("Challenges to the validity of any confinement or to
21 particulars affecting its duration are the province of habeas
22 corpus."). Where the claims at issue would result in "immediate
23 release if successful," such claims fall "within the core of habeas
24 corpus" and therefore must "be brought, if at all, in
25 habeas." *Nettles*, 830 F.3d. at 927-28 (citing *Preiser v.*
26 *Rodriguez*, 411 U.S. 475, 487 (1973)).

27 "If the prisoner's claim challenges the fact or duration of
28 the conviction or sentence, compliance with AEDPA is mandated,

1 while if the claim challenges any other aspect of prison life, the
2 prisoner must comply with the PLRA." *Nettles*, 830 F.3d. at
3 934.

4 Habeas relief is not available for "probabilistic
5 claims," i.e., where success on the claims "could
6 potentially affect the duration of confinement" or is "likely to
7 accelerate the prisoner's eligibility for parole." *Nettles*, 830
8 F.3d. at 933-34 (quoting *Docken v. Chase*, 393 F.3d 1024, 1031 (9th
9 Cir. 2004); *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir.
10 1989), overruled by *Nettles*).

11 Here, Petitioner brings a petition for writ of habeas corpus
12 under § 2254. The Court is not apprised of Petitioner's parole
13 eligibility or parole hearing status. Accordingly, the Court
14 denies Petitioner's motion (ECF No. 8).

15 **III. Motion Inquiring about Appointed Counsel (ECF No. 9)**

16 As provided in the Court's previous order, the Court deferred
17 and will continue to defer consideration of the motion for
18 appointment of counsel until Petitioner has fully complied with
19 this order. Accordingly, the Court denies Petitioner's motion (ECF
20 No. 9).

21 **IT IS THEREFORE ORDERED:**

22 1. Petitioner's Motion pertaining to Pertinent Matters (ECF
23 No. 8) is DENIED.

24 2. Petitioner's Motion Inquiring about Appointed Counsel (ECF
25 No. 9) is DENIED.

26 3. Within 30 days of the date of this order, Petitioner must
27 file a copy of his inmate trust account statement for the
28 six-month period prior to filing. Alternatively,

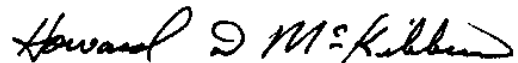
Petitioner will pay the \$5 filing fee within 30 days.

4. The Clerk of Court is instructed to MAIL Petitioner a blank form petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 with instructions.

5. Petitioner must file an amended petition on the Court's form within 30 days. Petitioner must clearly title the amended petition as such by writing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus" on page 1 in the caption, and he must place the case number, 3:21-cv-00187-HDM-CLB, in the designated space.

6. Petitioner's failure to comply with this Order by (a) filing an amended petition, and either (b) submitting a statement of his inmate trust account for the six-month period prior to filing to complete his IFP application, or (c) paying the filing fee within 30 days will result in the dismissal of this action without prejudice and without further advance notice.

DATED: this 29th day of September, 2021.



HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE